

Montana Water Court
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IN THE WATER COURT OF THE STATE OF MONTANA
UPPER MISSOURI DIVISION
TWO MEDICINE RIVER – BASIN (41M)

CLAIMANTS: D M Hays Marital Trust; E F Hays
Survivors Trust

41M-0045-P-2022
41M 30153501

OBJECTOR: Blackfeet Tribe

NOTICE OF INTENT TO APPEAR: United States of
America (Bureau of Indian Affairs)

NOTICE OF FILING OF MASTER'S REPORT

This Master's Report was filed with the Montana Water Court on the above stamped date. Please review this report carefully.

You may file a written objection to this Master's Report within **10 days** of the stamped date if you disagree or find errors with the Master's findings of fact, conclusions of law, or recommendations. Rule 23, W.R.Adj.R. If the Master's Report was mailed to you, the Montana Rules of Civil Procedure allow an additional 3 days be added to the 10-day objection period. Rule 6(d), M.R.Civ.P. If you file an objection, you must serve a copy of the objection to all parties on the service list found at the end of the Master's Report. The original objection and a certificate of mailing to all parties on the service list must be filed with the Water Court.

If you do not file a timely objection, the Water Court will conclude that you agree with the content of this Master's Report.

MASTER’S REPORT
PROCEDURAL HISTORY

The above captioned stock claim is before this Court due to a combination of an objection and notice of intent to appear from the Blackfeet Tribe and the United States of America (Bureau of Indian Affairs), and an issue remark placed on the claim during claims examination by the Department of Natural Resources and Conservation (DNRC).

All elements of the claim appeared on the Basin 41M objection list.

On December 14, 2022, the parties filed a Stipulation to Resolve Objections.

ISSUES

1. Is the issue remark resolved?
2. Are the objection and the notice of intent to appear resolved?

STATEMENTS OF APPLICABLE LAW

Burden of Proof

1. A properly filed Statement of Claim for Existing Water Right or an amended claim for Existing Water Right is prima facie proof of its content. Section 85-2-227, MCA. This prima facie proof may be contradicted and overcome by other evidence that proves, by a preponderance of the evidence, that an element of the prima facie claim is incorrect. This is the burden of proof for every assertion that a claim is incorrect. Rule 19, W.R.Adj.R. A preponderance of the evidence is evidence that demonstrates the fact to be proved is “more probable than not.” *Hohenlohe v. State*, 2010 MT 203, ¶33, 357 Mont. 348, 240 P.3d 628.

2. The Montana Water Court is permitted to use information submitted by the Department of Natural Resources and Conservation, the statement of claim, information from approved compacts, and any other data obtained by the Court to evaluate water right claims. Section 85-2-231(2), MCA.

Settlement

3. The Montana Water Court may accept a settlement agreement that reduces or

limits an element of a claim and need not determine whether the burden of proof is met unless there is an unresolved issue remark on the claim. Rule 17(c), W.R.Adj.R.

Issue Remark Resolution

4. When resolving issue remarks, the Montana Water Court must weigh the information resulting in the issue remark and the issue remark against the claimed water right. Section 85-2-247(2), MCA.

5. The Montana Water Court has the authority to resolve issue remarks when the claim file and information available to the Court provide a sufficient basis to do so. Section 85-2-248(3), MCA.

FINDINGS OF FACT

1. Stock claim 41M 30153501¹ appeared in the Preliminary Decree for Basin 41M as a use right with a July 31, 1918 priority date.

2. The parties stipulated to a reduced priority date for the claim. The historical priority date for claim 41M 30153501 is August 20, 1930.

3. The claim has a point of diversion and/or place of use within the boundaries of the Blackfeet Reservation. Pursuant to an Order directing the Department of Natural Resources and Conservation (DNRC) examination of such claims, the claim appeared in the Preliminary Decree for Basin 41M with an issue remark stating it was not clear whether the claim was state-based or part of the tribal water right as defined by the Blackfeet Tribe-Montana-United States Compact.²

The examination Order directed the DNRC to collect additional information to aid the Court in the resolution of the issue remark. Pursuant to the Order, the DNRC applied a checklist to examine the claim according to their claimed priority date, the status of the land (tribal/trust or fee), and the status of the claimant (United States as trustee, Blackfeet

¹ Claim 41M 30153501 was split from claim 41M 155186-00.

² See Order Establishing Procedures for Examination of Claim Located within the Exterior Boundaries of the Blackfeet Indian Reservation and Order Pursuant to Section 85-2-243, MCA, Concerning Resolution of the P800 Issue Remark for Claims Located within the Exterior Boundaries of the Blackfeet Indian Reservation (Basins 40F, 40T, 41L, 41M) (March 29, 2013).

Tribe, an individual member of the Blackfeet Tribe, or no special status). This information was placed in the claim file. The information confirms the priority date of the claim does *not* claim the *Winters* priority date or the tribal water right priority date and the claim is on fee land. Claimants are not tribal members.³

This information confirms the claim is a state-based water right and is not part of the tribal water right as defined by the Blackfeet Tribe-Montana-United States Compact. The issue remark is resolved and should be removed from the abstract.

CONCLUSIONS OF LAW

The stipulated modification to claim 41M 30153501 is a reduction within the parameters of the statement of claim and the issue remark is resolved. The agreed upon modification should be made to the claim thereby resolving the objection and notice of intent to appear to the claim.

RECOMMENDATIONS

Based upon the foregoing, claim 41M 30153501 should be modified as follows to accurately reflect historical use.

PRIORITY DATE: ~~JULY 31, 1918~~ **AUGUST 20, 1930**

The issue remark should be removed from the claim abstract.

A Post Decree Abstract of Water Right Claim accompanies this report to confirm implementation of the recommendations in the state's centralized water right record system.

ELECTRONICALLY SIGNED AND DATED BELOW.

³ Although statement of claim 41M 155186-00 was filed by a member of the Blackfeet Tribe, the portion of the claim in this case, identified by claim number 41M 30153501 is owned by non-tribal members.

Service via Electronic Mail

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**POST DECREE
ABSTRACT OF WATER RIGHT CLAIM
TWO MEDICINE RIVER
BASIN 41M**

Water Right Number: 41M 30153501 STATEMENT OF CLAIM

Version: 1 -- SPLIT POST DECREE

Status: ACTIVE

Owners: HAYS, E F SURVIVORS TRUST
107 NORTH ST
%ELIZABETH HAYS
PORTLAND, ME 04101

HAYS, D M MARITAL TRUST
107 NORTH ST
% ELIZABETH HAYS
PORTLAND, ME 04101

Priority Date: AUGUST 20, 1930

Type of Historical Right: USE

Purpose (use): STOCK

Flow Rate: A SPECIFIC FLOW RATE HAS NOT BEEN DECREED BECAUSE THIS USE CONSISTS OF STOCK DRINKING DIRECTLY FROM THE SOURCE, OR FROM A DITCH SYSTEM. THE FLOW RATE IS LIMITED TO THE MINIMUM AMOUNT HISTORICALLY NECESSARY TO SUSTAIN THIS PURPOSE.

Volume: THIS RIGHT INCLUDES THE AMOUNT OF WATER CONSUMPTIVELY USED FOR STOCKWATERING PURPOSES AT THE RATE OF 30 GALLONS PER DAY PER ANIMAL UNIT. ANIMAL UNITS SHALL BE BASED ON REASONABLE CARRYING CAPACITY AND HISTORICAL USE OF THE AREA SERVICED BY THIS WATER SOURCE.
THIS CLAIM HISTORICALLY SERVED A TOTAL OF 704 ANIMAL UNITS.

Source Name: TWO MEDICINE RIVER

Source Type: SURFACE WATER

Point of Diversion and Means of Diversion:

<u>ID</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1		SWSW	21	31N	12W	GLACIER

Period of Diversion: JANUARY 1 TO DECEMBER 31

Diversion Means: LIVESTOCK DIRECT FROM SOURCE

2		NESENW	28	31N	12W	GLACIER
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Period of Diversion: JANUARY 1 TO DECEMBER 31

Diversion Means: LIVESTOCK DIRECT FROM SOURCE

Period of Use: JANUARY 1 TO DECEMBER 31

Place of Use:

<u>ID</u>	<u>Acres</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1			SWSW	21	31N	12W	GLACIER
2			NESENW	28	31N	12W	GLACIER

Remarks:

THIS SPLIT CLAIM WAS AUTHORIZED BY THE WATER COURT BASED ON INFORMATION IN CLAIM NO. 41M 155186-00.

THIS WATER RIGHT IS LOCATED, IN WHOLE OR IN PART, WITHIN THE BOUNDARY OF THE BLACKFEET INDIAN RESERVATION.